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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Expedited Rulemaking of	)	RM 9101
LCI International Telecom Corp. and	)	
Competitive Telecommunications Association	)	
to Establish Technical Standards for	)	
Operations Support Systems	)	

REPLY COMMENTS OF BELL ATLANTIC AND NYNEX[1]

The Telecommunications Act of 1996 establishes a process of negotiation, with arbitration by state commissions if necessary, for carriers to set the terms and conditions governing interconnection of their networks, purchase of services for resale, and access to unbundled network elements. That process is working; Bell Atlantic and NYNEX have signed interconnection and resale agreements with dozens of carriers.

Remarkably, the very carriers pressing the Commission to initiate a rulemaking to establish national performance criteria have, in most instances, already taken advantage of the process in the Act to reach final or near final agreements with Bell Atlantic and NYNEX. Pursuant to interconnection agreements and state commission decisions, the Companies will track and report a wide range of performance measures. It is inappropriate for these carriers to

[1] "Bell Atlantic" includes Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc., and Bell Atlantic Communications, Inc. "NYNEX" includes New York Telephone Company and New England Telephone and Telegraph Company. Bell Atlantic and NYNEX are sometimes referred to collectively as "the Companies."

seek to override their agreements and state commission decisions through a Commission rulemaking.

In any event, the recent Eighth Circuit Court of Appeals decision makes clear that the Commission lacks authority to abrogate the negotiation and arbitration process established by the Act. The Commission should, therefore, deny LCI's and CompTel's petition for rulemaking.

I. The Commission Should Allow The Process Of Negotiation And Arbitration Contemplated By The Act To Continue.

The Act provides that new entrants and incumbent local exchange carriers (ILECs) are to negotiate the terms and conditions for interconnection, the purchase of services for resale and access to unbundled elements. 47 U.S.C. §252(a). Such terms and conditions could include performance measurements, reporting, standards, and enforcement mechanisms. If parties are unable to reach agreement, the Act provides that they may ask the State commission to arbitrate any unresolved issues. 47 U.S.C. §252(b). Bell Atlantic and NYNEX have demonstrated that they are committed to making this process work.

Bell Atlantic negotiated requirements for performance reporting with TCG in October, 1996 and subsequently has reached agreement with many other competitive local exchange carriers (CLECs), including LCI, to provide similar performance reports.[2] MCI sought additional performance measurements and reporting requirements in its negotiations with Bell Atlantic. That request was submitted to arbitration in several states, two of which ordered Bell Atlantic to provide additional performance reports if MCI pays the cost of the additional

[2] Bell Atlantic issued its first performance reports to eight CLECs in April; the second quarterly reports were issued to 18 CLECs on July 25, 1997.

measures it wants; the parties have now signed several interconnection agreements reflecting these arbitration decisions, and Bell Atlantic is pricing out the additional measures.[3]

Similarly, NYNEX has provided performance reports to some competitive local service providers, and is engaged in proceedings in New York and Massachusetts that are considering what performance measurements NYNEX should be required to provide to CLECs operating there.[4] This process of negotiation between ILECs and CLECs, with state commission oversight as necessary, ensures that the reasonable needs of CLECs are accommodated, addresses particular characteristics of individual LCE's OSSs, and takes into account relevant service quality standards of each individual state.

By contrast, adopting national performance standards, as LCI and CompTel request, would ignore not only the differences among various LEC's OSSs,[5] but also the needs of

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[3] *See Application of MFS Intelenet, et al.,* Docket Nos. A-310203F0002, et al., Interim Order at 137-38 (Pa PUC, April 10, 1997). Similarly, the New Jersey Board of Public Utilities has announced that it will address performance measures and reporting. *Notice of Pre-Proposal; Notice of Investigation: Local Exchange Competition for Telecommunications Services*, Docket No. TX95120631, Tr. 49-50 (NJ BPU, July 17, 1997).

[4] The Massachusetts Department of Public Utilities issued an order on July 29 that focused specifically on requirements for performance measurements and standards and addressed virtually all of the LCUG proposals. *Consolidated Petitions of New England Telephone and Telegraph Co. d/b/a NYNEX, Teleport Communications Group, Inc., Brooks Fiber Communications, AT&T Communications of New England, Inc., MCI Communications Co., and Sprint Communications Co., L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration agreements between NYNEX and the aforementioned companies,* D.P.U. 96-73/74, et al. (Mass. D.P.U. July 29, 1997). In addition, the Companies have committed to report to the Commission additional performance measures for a period of four years following approval of the merger between them. Those reports will be made available to individual CLECs that request them. In connection with the merger, the Companies have also committed, among other things, to provide uniform interfaces to their OSSs, to conduct operational testing of OSS interfaces with carriers, and to engage in good faith negotiations in response to reasonable requests to establish performance standards for various OSS and network functions.

[5] CompTel's argument that adoption of uniform standards would reduce ILECs' costs because "they would have to set up one system throughout their operating territories" ignores reality. CompTel Comments at 4. If an ILEC could reduce its costs by adopting "one system"

operating companies than in making a serious effort to enter the local market. Neither provides a valid basis for a Commission rulemaking.

First, as noted above, the Companies already have agreed to track and report a variety of performance measurements, and the initial reports to CLECs have already been issued. Where disputes have arisen, state commissions are actively involved in deciding these issues, either in arbitration proceedings or in the context of broader cases focused on opening the local market to competition.[13] The fact that these commissions have not adopted all of AT&T's or MCI's arguments[14] does not mean that their decisions are inadequate or that they are incapable of carrying out their responsibilities under the Act. There is, therefore, no reason for the Commission to abrogate the negotiation and arbitration process contemplated by the Act.

Second, LCUG's members include all of the large interexchange carriers[15] -- the companies that have the most to lose if Bell operating companies are authorized to provide consumers with real long distance competition. Those carriers have a vested interest in delaying the entry of Bell operating companies into the long distance market for as long as possible. A

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13 *See, e.g., Consolidated Petitions of New England Telephone and Telegraph Co. d/b/a NYNEX, Teleport Communications Group, Inc., Brooks Fiber Communications, AT&T Communications of New England, Inc., MCI Communications Co., and Sprint Communications Co., L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration agreements between NYNEX and the aforementioned companies,* D.P.U. 96-73/74, et al. (Mass. D.P.U. July 29, 1997); *Application of MFS Intelenet, et al.,* Docket Nos. A-310203F0002, et al., (Pa PUC, April 10, 1997); *Proceeding on Motion of the Commission To Review Service Quality Standards Of Telephone Companies,* Case 97-C-0139 (NY PSC); *Notice of Pre-Proposal; Notice of Investigation: Local Exchange Competition for Telecommunications Services*, Docket No. TX95120631, (NJ BPU, July 17, 1997)

14 *See* MCI Comments at 11 ("nearly all states have refused to impose credits, let alone enforcement mechanisms of any type"); AT&T Comments at 29 ("AT&T does not recommend that [the Commission] adopt any of the existing state models").

15 *See* AT&T Comments at 13 (members of LCUG include AT&T, MCI, Sprint, WorldCom and LCI).

individual CLECs. As Sprint notes, "it would clearly be unsound for the Commission to take the lowest common denominator of existing ILEC performance and deem performance at that level acceptable for ILECs who are capable of, and are in fact providing their own customers with, a much higher level of performance. . . . At the same time, it is unreasonable to impose 'best-of-class' standards on all ILECs, since that might exceed the parity implicit in the nondiscrimination standard, and might not reflect the differences in operating environments faced by different ILECs."[6] This concern is particularly relevant in light of the clear command of the Eighth Circuit Court of Appeals that ILECs cannot be required to provide unbundled elements (such as OSS) at a higher level of quality than the ILEC itself uses.[7] Any "one size fits all" arbitrary numerical performance standard will be too high (and therefore forbidden) for some ILECs and too low (and therefore ineffectual) for others.

Similarly, USN Communications warns that adoption of specific performance criteria could require ILECs to redesign their OSS interfaces, which could, in turn, "require competitive pioneers, such as USN, to modify or replace OSS interfaces that are already in operation" or could force smaller CLECs "that have not yet completed the process of interfacing with BOC OSSs . . . to delay their market entry to await the development of new systems that would conform with the newly-imposed standards."[8] The Act's process of carrier to carrier negotiations, subject to state arbitration if necessary, allows varying needs of both ILECs and

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throughout its operating territory, it would not wait for a Commission rulemaking to take such an economically advantageous step, but instead would already have done so.

6 Sprint Comments at 9.

7 *Iowa Utilities Board v. FCC,* 1997 WL 403401, *24 (8th Cir. 1997).

8 USN Communications Comments at 1, 4.

CLECs to be accommodated. Accordingly, the Commission should reject calls for it to establish national "one-size-fits-all" performance standards.[9]

In any event, the Eighth Circuit's recent decision makes clear that the Commission has jurisdiction over the fundamentally intrastate matters covered by section 251 of the Act only where the Act expressly gives the Commission a role by name.[10] Because the Act does not call for the Commission to establish performance measurements or standards for any of these intrastate functions, and because the states are already engaged in this process, the Commission should deny LCI's and CompTel's petition to initiate a rulemaking.

II. The Real Reasons Behind The Long Distance Companies' Calls For Commission Action Do Not Provide A Valid Basis For Commission Rulemaking.

Almost all of the CLECs that filed comments either have reached or are close to reaching agreements with the Companies that provide for performance measurements and reporting.[11] Nevertheless, several CLECs argue that the Commission should effectively override the Act's negotiation and arbitration process and instead conduct a rulemaking to adopt the performance measurements and standards proposed by the Local Competition Users Group (LCUG).[12] In light of the near completion of negotiations, there can be only two explanations for these requests that the Commission initiate a rulemaking: either the commenters are dissatisfied with the bargains they struck or the results they obtained in arbitration, or they are more interested in throwing up roadblocks to protect their long distance cartel from competitive entry by Bell

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9 The differences among ILEC OSSs and the widely varying interests and states of readiness among CLECs would also make a negotiated rulemaking extremely contentious and unlikely to succeed.

10 *See, Iowa Utilities Board,* at *4.

11 In a number of cases, aspects of the agreements were arbitrated before state commissions.

12 *E.g.,* AT&T Comments at 2; MCI Comments at 1, 7; LCI Comments at 1, 2.

rulemaking to adopt "requirements . . . for performance measures, service quality levels, reporting, and enforcement" that must be met "before BOCs are given authority to provide in-region long-distance service" would provide just such a delay.[16] Moreover, it should come as no surprise that LCI's and CompTel's Petition suggests requirements that are physically impossible to achieve or that the LCUG standards it attaches would hold ILECs responsible for network performance within the control of CLECs.[17] The Commission should reject attempts by the long distance companies to misuse its regulatory processes in this way, and should deny LCI's and CompTel's Petition.

III. The Commission Should Not Establish Technical Standards, But Should Allow Industry Organizations To Continue Their Work.

There is general consensus among the commenters that industry organizations, such as ATIS and OBF, are the appropriate forums for developing technical standards and guidelines with respect to OSS interfaces.[18] As AT&T notes, "[t]he ATIS forums and committees have worked well in the past in developing guidelines and standards for similar telecommunications issues, such as interexchange access ordering."[19] Accordingly, the Commission should allow

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16 MCI Comments at ii.

17 *See* Bell Atlantic/NYNEX Comments at 7.

18 *See, e.g.,* AT&T Comments at 34-35; MCI Comments at 14; Sprint Comments at 2-3. CompTel, however, argues that there has been a "lack of progress in the establishment of uniform standards over the past year by industry groups acting on their own," and urges the Commission to step in. CompTel Comments at 3. This statement is in direct contradiction to CompTel's own statement in the Petition, which stated that the groups sponsored by the Alliance for Telecommunications Industry Solutions (ATIS) and accredited by the American National Standards Institute (ANSI) "are well positioned to resolve which interfaces and formats are reasonably necessary and practical for each particular OSS function or sub-function and have made substantial progress." LCI and CompTel Petition at 22 (internal quotation marks omitted).

19 AT&T Comments at 35.

these industry organizations to continue their work, and should not initiate a rulemaking to set technical standards.

Some commenters argue, however, that the Commission should oversee the work of the industry organizations by assigning staff members to work with the committees,[20] by setting deadlines for the development of standards,[21] or by identifying what standards need to be developed.[22] As the Commission is aware, ATIS meetings are public and open, and it is not unusual for staff members from the Commission or from state commissions to attend and participate in the discussions. More extensive involvement by the Commission, however, such as setting deadlines for the development of standards, or directing which standards the committees should be working on, could impede rather than advance the ability of these organizations to reach consensus. As Commissioner Ness noted at the July 15 meeting of the Network Reliability and Interoperability Council, participation by Commission personnel in standards setting groups could lead to posturing, not substance.

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20 AT&T Comments at 36.

21 Sprint Comments at 3.

22 AT&T Comments at 36.

CONCLUSION

LCI's and CompTel's Petition to establish national "one size fits all" performance standards for OSS interfaces is without merit. The Act contemplates that requirements for performance measurements, reporting, standards and enforcement mechanisms will be negotiated between CLECs and ILECs and, if necessary, arbitrated by the States. That process is occurring, and the Commission should not override agreements and arbitration decisions that already have been reached. The Commission also should refrain from establishing technical standards for OSS interfaces, and instead should let industry organizations continue their work. Accordingly, the petition for rulemaking should be denied.

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